89-342

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

CASE NO.

SUPREME COURT OF THE UNITED STATES

WILSON ROBERT SHERMAN, petitioner

v

NISSAN MOTOR CORPORATION IN U.S.A, and
NISSAN LIMITED

ON PETITION FOR CERTIORARI TO THE
COURT OF APPEAL OF CALIFORNIA
FIRST APPELATE DISTRICT

WILSON ROBERT SHERMAN
5460 White Oak, F309
Encino, CA 91316
(818) 501-2948
Petitioner, In Pro Per

CASE NO.

SUPREME COURT OF THE UNITED STATES

WILSON ROBERT SHERMAN, petitioner

v

NISSAN MOTOR CORPORATION IN U.S.A, and
NISSAN LIMITED

PETITION FOR WRIT OF CERTIORARI

QUESTIONS FOR REVIEW

The underlying matter involves issues of product liability and product safety. Petitioner will make obvious the fact that Defendant, NISSAN has a lethal steering lock defect that poses a National Emergency. Petitioner contends that the trial judge's holding that the warning given in the owners manual was sufficient as a matter of law is in error and a further denial of due process. Petitioner raises questions of public safety and seeks review in order to prevent "unreasonable risks of injury as mandated by Congress in enacting the Consumer Product Safety Act (15 U.S.C. section 2051, et seq). Petitioner was denied a review on purely technical issues while the California Appellate Court and California Supreme Court turned it's back on the State's Constitutional provision which provides that pursuing

and obtaining safety is an inalienable right.

PARTIES

The within products liability action was brought by Petitioner, Plaintiff WILSON ROBERT SHERMAN against Respondent, Defendants NISSAN MOTOR COMPANY IN U.S.A. and NISSAN LIMITED. Additional parties to the rulings sought to be reviewed are the HONORABLE JOHN G. SCHWARTZ, JUDGE, of the SAN MATEO COUNTY SUPERIOR COURT, the COURT OF APPEAL OF THE STATE OF CALIFORNIA, First Appellate District, District Three and the SUPREME COURT OF THE STATE OF CALIFORNIA.

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TABLE OF AUTHORITIES

CASES

Logan v Chatham County
(1966) 113 GaApp 491) 11

Lunghi v Clark Equipment Co
(1984) 153 CA3d 485 8, 9

Nevels v Ford Motor Company
(1971) 439 F2d 251 9, 11

Rice v Sioux City Cemetery
(1954) 3439 US 70

Temple v Velcro USA, Inc
(1983) 148 CA3d 1090 8

STATUTES

15 U.S.C.A. 1402(a) 3, 9

15 U.S.C. section 2051 3, 12

CONSTITUTIONAL PROVISIONS

Fourteenth Amendment to the United States Constitution, Section 1 2, 11

Constitution of the State of California Article 1, Section 1 3, 12

JURISDICTION

The CALIFORNIA SUPREME COURT denied Petitioner's petition for review on April 25, 1989. Petitioner now has no plain, speedy and adequate remedy other than by this petition for certiorari. Rule 17 of the Rules of Court of the United State Supreme Court states that certiorari "will be granted only when there are special and important reasons therefor." Petitioner submits that highway deaths due to a defective design by Defendant NISSAN MOTORS is a "special and important reason." "'Special and important reasons' imply a reach to a problem beyond the academic or episodic (Rice v Sioux City Cemetery (1954) 3439 US 70, 74)."

The CALIFORNIA SUPREME COURT in denying Petitioner's petition for review in essence has affirmed the Superior Court ruling that a warning in a vehicle

owner's manual was sufficient as a matter of law. Said ruling is in conflict with state and federal holdings. The denial of review also allows to stand the trial court's restriction on the testimony of Petitioner's expert witness and further denies petitioner his right to due process granted under the fourteenth amendment to the Constitution.

UNDERLYING CONSTITUTIONAL PROVISIONS AND STATUTES

Petitioner calls to the Courts attention the following Constitutional provisions and statutes:

a. Fourteenth Amendment to the United States Constitution, Section 1, as follows:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;

> nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

b. Article one, Section 1 of the Constitution of the State of California as follows:

> All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

c. 15 U.S.C.A. 1402(a) as follows:

> Every manufacturer of motor vehicles or tires shall furnish notification of any defect in any motor vehicle of motor vehicle equipment produced by such manufacturer which he determines, in good faith, relates to motor vehicle safety, to the purchaser (where known to the manufacturer) of such motor vehicle or motor vehicle equipment, within a reasonable time after such manufacturer has discovered such defect.

d. 15 U.S.C. section 2051 Congressional findings and declaration of

purpose

(a) the Congress finds that -

(1) an unacceptable number of consumer products which present unreasonable risks of injury are distributed in commerce;

(2) complexities of consumer products and the diverse nature and abilities of consumers using them frequently result in an inability of users to anticipate risks and to safeguard themselves adequately;

(3) the public should be protected against unreasonable risks of injury associated with consumer products;

(4) control by State and local governments of unreasonable risks of injury associated with consumer products is inadequate and may be burdensome to manufacturers;

(5) existing Federal authority to protect consumers from exposure to consumer products presenting unreasonable risks of injury is inadequate; and

(6) regulation of consumer products the distribution or use of which affects interstate or foreign commerce is necessary to carry out this chapter.

(b) The purposes of this chapter are -

(1) to protect the public against unreasonable risks of injury associated with consumer products;

(2) to assist consumers in

evaluating the comparative safety of consumer products;

(3) to develop uniform safety standards for consumer products and to minimize conflicting State and local regulations; and

(4) to promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.

STATEMENT OF CASE

On November 24, 1981, Petitioner, plaintiff WILSON SHERMAN and his fiance JULIE RIESS took a ride in SHERMAN's mother's new 1981 Datsun 280 ZX (manufactured by defendant NISSAN). The vehicle veered off the road and crashed into a tree, killing RIESS and injuring SHERMAN.

Subsequent examination of the vehicle and accident reconstruction revealed that steering wheel lockup as the cause of the crash. It is Petitioner's contention that the steering wheel lockup occurred as a result of a

design defect in the steering column of the NISSAN vehicle, in that an inadvertent lockup occurred while the vehicle was in motion.

All American auto utilize a safety device to prevent inadvertent steering lock-up. NISSAN ignored this crucial de facto safety device for nearly twenty years, making a remedial design change, starting only in 1987.

The NHTSA has reported in the Federal Register of April 5, 1988 that inadvertent lock-up continues to harm and kill.

The California Department of Motor Vehicles has recently issued a warning about inadvertent lock-up. They alerted the drivers in California about the extreme danger of inadvertent lock-up in their new drivers handbook.

Though required by the Traffic Motor Vehicle Safety Act to warn all

states/drivers of NISSAN vehicles, about this defect, NISSAN refuses to do so.

Petitioner filed a civil action on November 22, 1982. The matter came to trial on March 10, 1987 and culminated in a general verdict and judgment for Defendants which was entered on April 7, 1987.

During the trial, the trial judge precluded Petitioner's expert witness, SCHMIDT, from testifying as to the design defect as SCHMIDT had not finalized his opinion at the time of his deposition by Defendant. The trial judge further refused to allow jury instruction BAJI 9.00.7 relating to liability for failure to warn. Judge McDonald held that the existence of a warning in the owner's manual was sufficient as a matter of law.

Petitioner appealed the judgment on the grounds of prejudicial errors and that a matter of great public safety was

at issue. The Court of Appeal of the State of California In and For the First Appellate District, Division Three, denied the appeal on February 8, 1989 for failure to comply with California Rules of Court, rule 13 and 15(a). The California Supreme Court denied the petition for review on April 25, 1989. To date no review of the case on its merits has occurred. Although NISSAN altered its steering lock design in 1987 as a remedial action, there still exists per 1987 cars on the highway containing this serious steering lock defect. The United States Supreme Court, as the final Court of appeal, is Petitioner's last hope to bring this defect to the attention of the public in the hope of saving lives.

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ARGUMENT

The California Supreme Court, by denying Petitioner's request for review allowed to stand a trial court ruling which is in conflict California Appellate rulings, federal holdings and the intent of Congress in enacting the Consumer Product Safety Act (as stated in 15 U.S.C section 2051). The trial judge based his ruling to exclude BAJI 9.00.7, liability for failure to warn, on Temple v Velcro USA, Inc (1983) 148 CA3d 1090. It is apparent by the Court of Appeals holding in Lunghi v Clark Equipment Co (1984) 153 CA3d 485, that such a ruling was not the intent of Temple, supra. The Court in Lunghi states, citing Temple and numerous other cases, that "In the instant case, however, reversal is required in spite of the 'no defect' finding because of the trial court's refusal to instruct the jury that failure to warn or an

inadequate warning may constitute a design defect [emphasis added] (Lunghi v Clark Equipment Co, supra, at 493-494)." In Nevels v Ford Motor Company (1971) 439 F2d 251, 258 the United States Court of Appeals upheld a jury instruction allowing the jury to determine whether a warning was required, "and if so whether Ford had complied by sending a proper notice [emphasis added]."

15 U.S.C.A. 1402(a), supra, requires that every manufacture of motor vehicles furnish notification of any defect. "The trial judge correctly interpreted the statue to mean that if Ford discovered in one car a defect common to automobiles manufactured by it, Ford then had a duty to notify other purchasers (Nevels v Ford Motor Co, supra, at 256)." The clear intent of the Congress and the Courts' holdings is not that such a warning should be relegated to page 25 of an

owner's manual. Petitioner's Constitutional right to due process of law has been denied by the trial courts refusal to give a proper jury instruction.

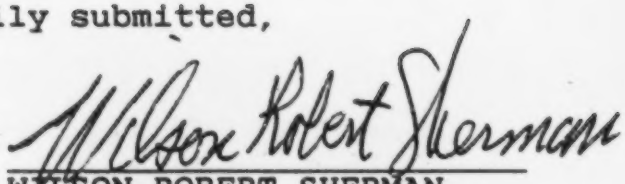
The questions raised by this petition go beyond the technical to a very simple issue, the protection of lives. The fourteenth amendment to the Constitution prohibits any state from depriving any person of life without due process. Yet the action of the trial court, the California Court of Appeals and the California Supreme Court have allowed NISSAN MOTORS' not to be held accountable for steering lock defect which potentially deprives persons of life without due process. Congress saw the need to protect the individual from "unreasonable risks of injury" and to prevent "protect-related deaths" when it enacted the Consumer Product Safety Act, 15 U.S.C. section 2051 et seq. The

California Constitution, article one, specifically grants to its citizens the unalienable right of "pursuing and obtaining safety". Petitioner SHERMAN submits that the United States Constitution, the California Constitution and the actions of Congress expressly dictate that a review of the trial proceedings and judgment in the underlying matter herein is in the public interest and well within the jurisdiction of this Court.

Wherefore, Petitioner prays that a writ of certiorari or other appropriate writ may be issued out of this Court to the San Mateo County Superior Court of the State of California commanding it to certify and return to this Court certain proceedings had before it as follows: SHERMAN v NISSAN MOTOR CORPORATION, Case number 269509; and for such other and further relief as the Court may deem

just.

Respectfully submitted,



WILSON ROBERT SHERMAN
Petitioner, In Pro Per

APPENDIX

A. Dismissal of Appeal by Court of Appeal of the State of California In and For the First Appellate District Division Three, filed February 8, 1989. See Exhibit "A".

B. Order Denying Review by the Supreme Court of the State of California, filed April 25, 1989. See Exhibit "B".

EXHIBIT "A"
COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE

FIRST APPELLATE DISTRICT

DIVISION THREE

Wilson Sherman, Plaintiff and Appellant, vs. Nissan Motor Corporation, et al., Defendants and Respondents	1/A038665 San Mateo County Superior Court No. 269509

BY THE COURT:

On October 26, 1988, this court ordered appellant's opening brief stricken "for failure to comply with California Rules of Court, rule 13 and 15(a). (Berger v. Godden (1985) 163 Cal.App.3d 1113.)" The order further provided that appellant would be given 30 days in which to file a brief which complied with the rules and case law requirements, and that if he failed to do so, "that appeal will be dismissed."

On December 5, 1988, appellant filed an opening brief which again failed to comply in any significant

15(a)

spect with the rules of court and the case law
quirements.

Therefore, respondent's motion to dismiss the
peal is granted; the appeal is hereby dismissed.

Respondent's request for costs and attorney fees
denied. Respondent's motion to augment the record
d appellant's request for judicial notice are
enied as moot.

ated _____

_____ P.J.

ORDER DENYING REVIEW

AFTER JUDGMENT BY THE COURT OF APPEAL

1st District, Division 3, No. A038665

S009371

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

WILSON ROBERT SHERMAN

v.

NISSAN MOTOR CORPORATION et al.

SUPREME COURT
FILED
APR 25 1989
Robert Wandruff Clerk
Deputy

Appellant's petition for review DENIED.

Chief Justice